
OLR Bill Analysis

sHB 5129

AN ACT CONCERNING THE REGULATION OF IONIZING RADIATION AND STREAM CHANNEL ENCROACHMENT LINES BY THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.

SUMMARY:

This bill repeals provisions establishing stream channel encroachment lines and permitting encroachments upon or uses and activities within them.

The bill also makes changes in the radiation and radioactive material law. It:

1. expands the list of prohibited acts;
2. requires that registration renewal occur biennially rather than annually and changes the fee accordingly;
3. provides the Department of Energy and Environmental Protection (DEEP) commissioner expanded authority over licenses and violations and sets notice and hearing procedures in place of current law, which allows a hearing at the request of people affected by certain proceedings on rules, regulations, and licensing of ionizing radiation sources;
4. allows the commissioner to issue a cease and desist order and suspend or revoke a registration upon a showing of cause after a hearing;
5. imposes penalties on people who violate laws and applicable regulations, orders, and permits concerning radiation and radioactive material; and
6. makes people who violate these laws liable for clean-up and

restoration costs.

The bill also makes many technical and conforming changes.

EFFECTIVE DATE: October 1, 2012; except the stream channel encroachment line repeal provision is effective upon passage; and a technical change is effective January 1, 2014.

§ 27 – STREAM CHANNEL ENCROACHMENT LINES

The bill repeals DEEP's authority to establish stream channel encroachment lines and issue permits for encroachments upon or uses and activities within them. It eliminates the need for DEEP to consider these provisions when deciding whether to grant other permits, such as certain hazardous waste permits.

Under current law, the commissioner must establish along certain inland waterways or flood-prone areas, lines beyond which no one may place any encroachment, hindrance, or obstruction without authorization. He must evaluate whether to issue or deny a permit for these actions based on their effect upon flood-carrying and water storage capacity of the waterways and flood plains, hazards to life and property, and flood heights, among other things (see BACKGROUND).

§§ 4-5, 12-15, 25-26, 28 -- RADIATION AND RADIOACTIVE MATERIALS

Registration Requirements

Current law generally requires any person, firm, corporation, town, city, or borough that conducts or plans to conduct any operation involving ionizing radiation and radioactive material to register with the commissioner. The bill requires a biennial reregistration in January of odd-numbered years with a \$ 400 fee rather than a \$ 200 reregistration fee each January (see BACKGROUND).

Prohibited Acts

The bill broadens the scope of existing law that generally prohibits anyone from using, manufacturing, producing, transporting, transferring, receiving, acquiring, owning, or possessing any ionizing

radiation source by explicitly prohibiting certain violations by (1) persons, firms, corporations, towns, cities, and boroughs operating any ionizing radiation source or producing, transporting, storing, possessing, or disposing of radioactive material; (2) hospitals using naturally occurring radioactive material or radioactive isotopes; and (3) health professionals using x-ray machines.

Orders to Abate or Correct Violations, Service, and Hearing Procedure

The bill removes a requirement that the commissioner hold a hearing, subject to judicial review, at the request of any person whose interests may be affected in proceedings for (1) issuing or modifying rules and regulations pertaining to control of ionizing radiation sources; (2) granting, suspending, revoking, or amending a license; and (3) determining compliance with, or granting exceptions from, DEEP rules and regulations.

The bill authorizes the commissioner to issue, modify, or revoke any order to correct or abate violations of certain provisions of the radiation and radioactive materials law and any regulation or license issued under them. The order may include necessary remedial measures.

It requires any such order to be served by (1) certified mail, return receipt requested; (2) a state marshal; or (3) an indifferent person. If a state marshal or indifferent person serves the order, the original, with an endorsed return of service, must be filed with the commissioner. The order is deemed issued upon service or deposit in the mail. Any order must state why it was issued and specify a reasonable time for compliance.

An issued order is final unless a person aggrieved by it files a written request for a hearing before the commissioner within 30 days of issuance. The commissioner must then hold a hearing as soon as practicable. After the hearing, the commissioner must consider all the evidence and may affirm, modify, or revoke his order. He must notify the order recipient of his decision by certified mail, return receipt

requested. The commissioner may also extend the time for complying with an order if he believes it advisable or necessary. A modification or extension is a revision of an existing order and not a new order. There can be no hearing on it or appeal from it.

The bill allows any person aggrieved by the commissioner's final order to appeal it to New Britain Superior Court.

Cease and Desist Orders and Registration Revocation or Suspension

The bill also allows the commissioner to (1) issue a cease and desist order for certain violations of the radiation and radioactive materials law and (2) upon a showing of cause and after a hearing, suspend or revoke certain registrations.

By law, the commissioner can issue a cease and desist order when he finds that a person is causing, engaging in, maintaining, or about to cause, engage in, or maintain a condition or activity that is likely to or will result in imminent and substantial damage to the environment or public health. The law requires a person receiving such an order to immediately comply with it. A hearing must be held within 10 days of the order's receipt.

Attorney General's Authority

By law, when the commissioner believes anyone has engaged in or is about to engage in acts or practices that violate a specified law, rule, regulation, or order pertaining to radioactive material or radiation sources, he may ask the attorney general to seek an order (1) enjoining the act or practice or (2) directing compliance with the law, rule, regulation, or order. The bill repeals this provision and replaces it with a broader provision covering any act, practice, or omission that constitutes or will constitute a violation of any radiation and radioactive material law, regulation, or order.

The bill allows the commissioner to ask the attorney general to bring an action for injunctive relief in New Britain Superior Court if he believes that a person has engaged in or is about to engage in any act, practice, or omission that will violate the provisions of the radiation or

radioactive material law, regulations, or orders. It allows the court to issue a permanent or temporary injunction, restraining order, or other appropriate order if the commissioner shows that the person has engaged in or is about to engage in the act, practice, or omission. The order may require direct compliance or remedial measures.

The bill requires that such actions by the attorney general take precedence over other actions in the order of trial.

Liability of Responsible Persons

The bill makes a party who knowingly or negligently violates the radiation or radioactive materials law, regulations, orders, or permits liable to the state for (1) costs and expenses incurred in detecting, investigating, controlling, and abating the violation and (2) costs and expenses of restoring the air, waters, lands, and other natural resources. If restoration is not practicable or reasonable, the person is liable for any damage the violation causes to the air, waters, lands, or other natural resources. The filing of a lawsuit by the state does not bar it from applying other remedies.

If more than one person knowingly or negligently violates the radiation or radioactive materials law or any applicable regulation, order, or permit, and responsibility is not reasonably apportionable, each person is held jointly and severally liable.

Penalties for Certain Civil Violations

The bill establishes a penalty of up to \$ 1,000 for failing to (1) file any registration other than a general registration, plan, report, record, permit application, or other required information; (2) obtain any certification; or (3) display any registration, permit, or order, as required by the radiation or radioactive materials law, applicable regulation, order, or permit, or other similar violation as established by the commissioner. There is a maximum \$ 100 penalty for each day the violation continues.

The bill also establishes a penalty of up to \$ 25,000 and additionally up to \$ 25,000 for every day a violation continues, for causing,

engaging in, or maintaining any condition or activity violating the radiation or radioactive materials law, applicable regulation, order, or permit, or other similar violation as established by the commissioner.

Penalties for Criminally Negligent Violation

The bill subjects anyone who, with criminal negligence, violates these laws, regulations, orders, or licenses to a penalty of up to \$ 25,000 for each day of violation, up to one year in prison, or both for a first offense. A subsequent conviction is punishable by a fine of up to \$ 50,000 for each day of violation, up to two years in prison, or both.

Penalties for False Statements

The bill subjects anyone who makes a false statement, representation, or certification in any application, registration, notification, or other document filed or required to be maintained, to a penalty of up to \$ 25,000 for each day of violation, up to one year in prison, or both for a first offense. A subsequent conviction is punishable by a fine of up to \$ 50,000 for each day of violation, up to two years in prison, or both.

It subjects anyone who knowingly makes a false statement, representation, or certification in any application, registration, notification, or other document filed or required to be maintained, to a penalty of up to \$ 50,000 for each day of violation, up to three years in prison, or both for a first offense. A subsequent conviction is punishable by a fine of up to \$ 50,000, up to 10 years in prison, or both.

BACKGROUND

National Flood Insurance Program

All Connecticut municipalities participate in the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP). The program enables property owners in participating communities to purchase insurance as a protection against flood losses in exchange for community floodplain management regulations that reduce future flood damages. NFIP participation is based on an agreement between communities and the federal government (44 CFR § 59 et seq.). As part of the program, FEMA prepares flood maps that

identify high risk areas for flooding. Construction in these areas requires compliance with the local flood management regulation or ordinances. The local regulation or ordinance must meet minimum federal requirements.

Radioactive Material and Ionizing Radiation

By law, “radioactive materials” includes any solid, liquid, or gas that spontaneously emits ionizing radiation. “Ionizing radiation” includes gamma rays, x-rays, alpha and beta particles, neutrons, protons, high-speed electrons, and other atomic or nuclear particles, but not sound, radio, or light waves.

Federal Nuclear Regulation

Under federal law, the United States Nuclear Regulatory Commission is responsible for regulating nuclear power plants; uses of nuclear materials, such as in nuclear medicine; and nuclear waste.

Related Bill

sHB 5465, favorably reported by the Commerce Committee, repeals DEEP’s authority to establish stream channel encroachment lines and issue permits for encroachments upon or uses and activities within them.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 28 Nay 1 (03/14/2012)